

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of SHA'LYNN LARKIN, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SHERI LARKIN,

Respondent-Appellant.

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UNPUBLISHED

October 24, 2006

No. 268619

Genesee Circuit Court

Family Division

LC No. 04-117877-NA

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating her parental rights to her minor child under MCL 712A.19b(3)(a)(ii), (c)(i), (c)(ii), (g), (i), (j), and (l). We affirm. This appeal is being decided without oral argument under MCR 7.214(E).

Respondent contends that the trial court erred in finding that clear and convincing evidence supported termination of her parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). We disagree. Shortly before the child in this case was born, respondent's parental rights to another child were terminated due to her long-term drug abuse, criminal acts, failure to maintain housing or employment, and failure to cooperate with agency services. Thereafter, respondent for a time did well in a residential program but then relapsed into drug use and violated her previous probation, resulting in her being incarcerated at the time of the permanent custody hearing. The record supports the trial court's findings that respondent was unlikely to be able to parent adequately in the foreseeable future. The trial court therefore did not clearly err in finding that clear and convincing evidence warranted termination under the challenged subsections. See *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005); MCR 3.977(J). Even if respondent's challenges were valid, however, the trial court's findings under the remaining unchallenged subsections would be sufficient to warrant termination, given that a petitioner need establish only one statutory ground for termination of parental rights. MCL 712A.19b(3); *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). The record also supports the trial court's finding that termination was not contrary to the best interests of the child. MCL 712A.19b(5); *In re Trejo, Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

We also reject respondent's contention that the trial court improperly exercised jurisdiction over the child in this case in light of the Indian Child Welfare Act (ICWA), 25 USC

1901 *et seq.* The ICWA applies only to proceedings in which the child is an “Indian child” within the meaning of the act. *Fried, supra* at 539. If a trial court in a termination case knows or has reason to know that the child involved is an Indian child, the party seeking termination is required to notify the parent or Indian custodian and the child’s Indian tribe of the pending proceedings. *Id.* at 538-539. It is then for the tribe to determine whether the child is an Indian child. *Id.* at 540. Once proper notice is provided to the tribe, or to the Secretary of the Interior if the identity of the tribe is unknown, and if the tribe fails to intervene in the proceedings, the burden shifts to the parent to show that the ICWA applies. See *In re TM (After Remand)*, 245 Mich App 181, 187; 628 NW2d 570 (2001).

While this case was pending before the trial court, respondent learned from her biological mother that she purportedly had Native American ancestry. At the trial court’s direction, petitioner inquired of the Secretary of the Interior and received the response that there was insufficient information for the determination that the child was an Indian Child within the act. There being no intervention by a tribe, the burden then shifted to respondent to provide further evidence that the act applied, which respondent failed to do. We therefore reject respondent’s contention that the trial court was bound by the ICWA.

We similarly reject as without merit respondent’s additional contentions that she received ineffective assistance of counsel at trial and that the Americans with Disabilities Act was applicable in this case. Our review of the record finds no support for either contention.

We affirm.

/s/ Mark J. Cavanagh  
/s/ Richard A. Bandstra  
/s/ Donald S. Owens